

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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In the Matter of Transmission Projects Reports
and Development of Certified List of
Transmission Line Projects

ISSUE DATE: November 19, 2001

DOCKET NO. E-999/TL-01-961

ORDER DENYING RULEMAKING
PETITION AND CONVENING WORKING
GROUP

PROCEDURAL HISTORY

Since the mid-1970s, people building large energy facilities in Minnesota – including large lines for transmitting high-voltage electricity – had to obtain a certificate of need pursuant to Minn. Stat. § 216B.243 and Commission regulations.

On May 29, 2001, the Governor signed the Minnesota Energy Security and Reliability Act, Senate File 722, Minnesota Laws 2001, Chapter 212. Article 7 § 30 of that chapter creates Minnesota Statutes § 216B.2425, directing each electric utility to file a “transmission projects report” with the Public Utilities Commission by November 1 of odd-numbered years. By the following June 1, the Commission must rule on which projects are necessary, needed, and in the public interest. Such transmission line projects could proceed without a § 216B.243 certificate of need.

On June 28, 2001, the Commission issued a Notice of Required Filing(s), with an Attached Transmission Approval Process – Draft Staff Discussion Paper. The notice invited comments. By September 6, 2001, the Commission had received substantive comments from Communities United for Responsible Energy, the Izaak Walton League of America, the Minnesota Department of Commerce (the Department), the Minnesota Environmental Quality Board (EQB), the Minnesota Municipal Utilities Association, the Minnesota Transmission Owners (MTO), the North American Water Office, Mr. Mark Oberg, the Overland Law Office, and the Power Line Task Force (PLTF).

On September 14, 2001, a technical conference was convened to address issues raised in the staff discussion paper and in comments. Subsequently Laura and John Reinhardt filed comments on the conference, and the MTO filed a document entitled “Interim Guidelines – Minnesota Transmission Plan.”

On October 4, 2001, the Commission noted its intent to address these matters at its October 23 meeting, and invited comments on the “Interim Guidelines.” The Commission received comments from the Department, the EQB and Mr. Oberg.

On October 8, 2001, the Reinhardts filed a petition to establish rules setting forth procedures for the November 1 filings.

The matter came before the Commission on October 23, 2001. At the hearing, public utilities announced that they would not be proposing any transmission line projects in this year's transmission line reports. In addition, the Department offered to convene a working group to develop recommendations on how the Commission should implement the new statute.

FINDINGS AND CONCLUSIONS

I. Interim guidelines

MTO proposes interim guidelines for filing statutorily-required transmission projects reports due November 1. MTO argues that such procedural guidelines would help guide regulators, utilities, citizens and communities through this new process. The Department (with one modification) and the EQB support the proposed guidelines.

II. Petition for rulemaking

Petitioners Laura and John Reinhardt oppose the proposed guidelines as inadequate and inappropriate. In lieu of those guidelines, they petition the Commission under Minnesota Statutes §§ 14.06¹ and 14.09,² to establish appropriate guidelines through a rulemaking.

In support of their petition, the Reinhardts argue that the public's rights in general, and landowners' due process rights in particular, would not be adequately protected until the Commission establishes procedures for addressing transmission line proposals. By certifying a high-voltage transmission line project, they allege, the Commission would remove the last opportunity for members of the public to oppose a project, and thus the last opportunity to oppose any exercise of eminent domain needed to implement the project.

Mr. Oberg supports these arguments.

III. Analysis

In addressing the petitioners' concerns, the Commission must reconcile a number of competing considerations. While petitioners accurately note that the Legislature directs agencies to conduct rulemakings when the rights of the public are at issue, this is only part of the picture. The Legislature has also established lengthy procedures for adopting rules, while also establishing a November 1 deadline for utilities to file their transmission plans.

¹Minnesota Statutes § 14.06 directs state agencies to establish, by rule, procedures for administering official duties where those procedures directly affect the rights of or procedures available to the public.

²Minnesota Statutes § 14.09 permits anyone to petition an agency to adopt, repeal or amend a rule. The statute grants agencies 60 days to set forth a written disposition of the request.

First, the Commission notes that it has complied with Minnesota Statutes § 14.06 by establishing rules of practice and procedure at Minn. Rules chapter 7829. These rules are used routinely for a wide variety of filings before the Commission,³ and provide for giving notice, permitting intervention, and receiving comments, among other things. To the extent that individual circumstances warrant modifying these procedures, the chapter provides for variances at parts 7829.3100 and .3200.

Rulemaking in Minnesota is a lengthy process, typically requiring more than a year to complete. Controversial rulemakings often take several years. Even if the Commission were utterly persuaded by the petition, the Commission could not grant the relief requested and complete a new rulemaking by November 1, 2001. On this basis alone, the Commission must deny the petition.

Aside from the Commission's inability to complete a rulemaking by November 1, the petitioners' allegation of harm that would accrue if the Commission failed to complete its rulemaking has proven to be unfounded, or at least premature. The Reinhardtts submitted their petition on October 8, 2001. What they did not know then, but all parties know now, is that no § 216B.2425 electric utility⁴ would propose a transmission line by November 1.⁵ In the absence of a proposal, the Commission cannot certify a project and thereby permit a § 216B.2425 electric utility to bypass existing certificate of need procedures. As a consequence, the harm that petitioners alleged might arise from such approvals cannot now occur.

Similarly, the absence of a proposal by a § 216B.2425 electric utility eliminates the need to consider interim guidelines for filing such proposals.

IV. Commission Action

Since no § 216B.2425 electric utility plans to include a transmission line proposal in its filing, the need for a quick decision about how to address such proposals has dissipated. But this reprieve cannot be seen as an excuse for delay, because the next filing date is only two years away. Therefore the Commission will immediately authorize the formation of a working group to make recommendations on how to implement § 216B.2425. The Commission will accept the Department's offer to convene such a working group, and to submit recommendations to the Commission by January 15, 2002.

³Regarding the scope of the Commission's rules of practice and procedure, Minn. Rules, part 7829.0200, subp. 2 provides that "[t]his chapter governs practice and procedure in matters before the commission except when a statute or a rule on a specific topic contains procedural requirements in direct conflict with this chapter."

⁴Section 216B.2425, subd. 2 directs "each public utility, municipal utility, and cooperative electric association, or the generation and transmission organization that serves each utility or association, that owns or operates electric transmission lines in Minnesota" to submit transmission projects reports. Subd. 3 directs the Commission to certify certain projects "proposed under subdivision 2."

⁵While none of the entities listed under § 216B.2425, subd. 2 included transmission lines in their transmission projects reports, some non-listed entities have subsequently made transmission line proposals. The Commission's conclusions today do not prejudice those filings.

The Commission will decline to act on the proposed interim guidelines. And, while the relief requested by the petitioners could not be granted, the Commission has sought to accommodate their concerns through the creation of a new forum addressing those issues. The Commission commends the petitioners and Mr. Oberg to that process.

ORDER

1. The petition for rulemaking is denied.
2. The Department of Commerce will convene a working group to develop recommendations on how the Commission should implement Minnesota Statutes § 216B.2425, and submit those recommendations to the Commission by January 15, 2002.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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